

**BUILD AMERICA BUREAU
MASTER CREDIT AGREEMENT PROGRAM
EMERGING PROJECTS AGREEMENT PROGRAM**

I. INTRODUCTION

The Moving Ahead for Progress in the 21st Century Act and the Fixing America's Surface Transportation Act give the Department the authority to provide contingent commitments of credit assistance for a program comprised of at least two related projects, each of which must have independent utility (i.e. are usable by the public even if the other projects are not completed) (a **Project Program**) under the Transportation Infrastructure Finance and Innovation Act of 1998 (**TIFIA**) credit program (**TIFIA Program**) and the Railroad Rehabilitation & Improvement Financing (**RRIF**) credit program (**RRIF Program** and together with the TIFIA Program, **Credit Programs**), respectively. This guidance provides an overview of the requirements for providing contingent commitments under a master credit agreement (the **Master Credit Agreement Program**).

The Department recognizes that certain Project Programs will benefit from the Department's technical assistance in the planning stage of development. To that end, the Department developed a program (the **Emerging Projects Agreement Program**) to provide technical assistance to eligible, high-priority Project Programs in the early development stages and for which an application for credit assistance may be submitted in the future for one or both Credit Programs. This guidance also provides an overview of the Emerging Projects Agreement Program.

II. MASTER CREDIT AGREEMENT PROGRAM

Master Credit Agreement Program – Purpose

The goal of the Master Credit Agreement Program is to provide certainty, predictability and efficiency for projects with an identified source of revenue and solidified schedule for construction by front-loading a significant portion of the negotiation of the specific terms and conditions for receipt of the contingent credit assistance at the time of execution of a master credit agreement (a **Master Credit Agreement**). Contingent commitments of credit assistance provided through a Credit Program will be (a) limited to a pre-determined maximum amount, (b) committed to the relevant Project Program for a pre-determined amount of time and (c) contingent upon execution of satisfactory documentation with the Department and satisfaction of certain terms and conditions. These conditions will include the statutory requirements of the relevant Credit Program.¹ While the Credit Programs have similar requirements for contingent commitments (as discussed below), the TIFIA Program has two additional requirements—the requirement for a common security pledge, and the requirement of an investment grade rating for the projects.

Master Credit Agreement Program – Selection Criteria

¹ Found at the following websites:
for RRIF: <http://www.fra.dot.gov/Page/P0128>

for TIFIA: <https://www.transportation.gov/tifia>

Project Programs that meet the following criteria will be considered for the Master Credit Agreement Program:

- each project must be an eligible project under the statutory requirements of the relevant Credit Program;
- each project must have a clear and solidified scope, schedule and financial plan;
- each project must be a discrete and relatively near-term capital project (given that each Credit Program is required to release any remaining committed funds that are not obligated within a designated amount of time following execution of the Master Credit Agreement (as further discussed below)); and
- Project Programs for which the project sponsor has identified a dedicated, non-Federal revenue source that will secure repayment of the credit assistance.

Master Credit Agreement Program – Application Package Requirements

Project sponsors seeking a contingent commitment of credit assistance must submit the required materials (**Letter of Interest/Draft Application**) to the Build America Bureau (the **Bureau**) indicating their interest in pursuing a Master Credit Agreement. When applying for the Master Credit Agreement Program, in addition to following the relevant Credit Program's specific requirements, project sponsors must describe in their Letter of Interest/Draft Application all of the projects anticipated to be covered by the Master Credit Agreement. Because the Master Credit Agreement must identify one or more dedicated, non-Federal revenue sources that will secure repayment of the credit assistance, the project sponsor should submit significantly detailed and solidified revenue studies, financial plans and financial models for all aspects of the pledged revenue source, even if portions of it will not become available until a future date.

Master Credit Agreement Program – Contracting Approach

The provision of a contingent commitment of credit assistance through a Credit Program will be documented in a Master Credit Agreement signed by the project sponsor(s) and the Department. The Master Credit Agreement will condition the future obligation of credit assistance on several factors, including availability of funds, final approval of the Secretary, and execution of one or more Loan Agreements on terms and conditions mutually agreed by the Department and the project sponsor. The minimum required contents for the Master Credit Agreement are described below. Each Master Credit Agreement will also describe the process for entering into a Loan Agreement thereunder and will include a tentative schedule for project development milestones and/or Loan Agreement closings under that Master Credit Agreement.²

Each Master Credit Agreement will be supplemented with one or more individual credit instruments, each of which will obligate credit assistance for a project covered under the Master Credit Agreement

² In developing a schedule, the construction schedule and the NEPA process timeline for each project will be taken into account. Each project must be reasonably anticipated to receive a NEPA determination and satisfy all other Federal requirements prior to execution of the related Loan Agreement.

For TIFIA, each project must also be able to commence the construction contracting process within 90 days after the closing of each Loan Agreement.

(each such credit instrument, a **Loan Agreement**)³. There is no statutory limitation on the number of Loan Agreements that can be executed under a Master Credit Agreement. After execution of a Master Credit Agreement by the project sponsor and the Department, the Department will internally reserve an amount equal to the anticipated amount of credit assistance to be requested by the project sponsor once the project is ready to receive credit assistance. The Master Credit Agreement will serve as a planning document for purposes of internal resource demarcation for the relevant Credit Program, but is not in of itself a binding agreement for credit assistance. Only executed Loan Agreements constitute a binding agreement for the provision of credit assistance. Approval of each Loan Agreement is subject to Sections 503(a) and 504(b) of the Federal Credit Reform Act, as well as Section 20.5 of Circular A-11.

Master Credit Agreement Program – Required Contents for a Master Credit Agreement

1. *Clear identification of the Project Program.* The Master Credit Agreement provides contingent commitments for programs of related eligible⁴ projects (e.g., multiple capital improvement projects within a rail system).⁵ When applying for a contingent commitment, project sponsors should (a) provide sufficient detail to assess eligibility of each project and (b) demonstrate that each project can meet the relevant Federal requirements.
2. *Clear identification of collateral.* For the RRIF Program, individual Loan Agreements may be secured by different revenue sources. For the TIFIA Program, the revenue source(s) identified must be common across all the Loan Agreements executed under the Master Credit Agreement; this common security pledge cannot change in the future as Loan Agreements are executed unless the change adds additional collateral that is applicable to all Loan Agreements under the TIFIA Master Credit Agreement (including previously executed Loan Agreements, if any).
3. *Provision for maximum contingent commitment amounts.* The Master Credit Agreement must state the maximum aggregate amount of the contingent commitment for all Loan Agreements under the Master Credit Agreement.
4. *Expiration of the contingent commitment.* Under the RRIF Program, the Master Credit Agreement must set a date (as determined by the Secretary, generally anticipated to be five years) by which the contingent commitment must be obligated under the Loan Agreement(s) executed thereunder (failure to do so resulting in the release of any remaining committed funds). Given the statutory Master Credit Agreement requirements for the TIFIA Program, any remaining committed funds that are not obligated within three years of execution of the Master Credit Agreement must be released, unless such expiration date is extended by the Secretary. Given these deadline requirements, the Master Credit Agreement will incorporate a final deadline for submission of an application for a

³ RRIF and TIFIA can also provide guarantees, and TIFIA can also provide lines of credit. Please see 23 U.S.C Section 601 for the TIFIA eligible projects criteria and 45 U.S.C Section 822 for the RRIF eligible projects criteria.

⁴ Eligibility is determined by the Bureau based on its specific project eligibility requirements.

⁵ In addition, TIFIA credit assistance may be extended for a single project where current-year funds have been fully obligated to other projects and the project sponsor elects to wait until the fiscal year when additional funds are available for credit assistance.

Loan Agreement that is at least 180 days in advance of the stated commitment expiration date to avoid unexpected issues that could jeopardize the availability of funds for projects.

5. *Achievement of Federal requirements.* Each Master Credit Agreement will require that all Federal requirements (including NEPA) for each project be met on or before execution of the anticipated Loan Agreement for such project.
6. *Identification of specific terms and conditions.* The Master Credit Agreement will also include specific terms and conditions for providing the credit assistance (including generally applicable covenants, representations and warranties, reporting requirements, “boilerplate” provisions such as governing law and notice provisions, events of default and remedies) that will be applicable to each Loan Agreement that is subsequently executed under the Master Credit Agreement, as well as, conditions precedent to entering into a Loan Agreement under the Master Credit Agreement.

In addition to the required contents described above, the Master Credit Agreement will identify a minimum rating that the identified revenue pledge for each Loan Agreement (for TIFIA, this is the common security pledge) must achieve as a condition to entering into that Loan Agreement. Each Loan Agreement executed under a Master Credit Agreement will include terms that are specific to the project(s) covered by that Loan Agreement (e.g. bring-down of certain Master Credit Agreement representations, project completion requirements, interest rate, debt service schedule). The first Loan Agreement under a Master Credit Agreement could be executed immediately following the execution of the Master Credit Agreement.

III. EMERGING PROJECTS AGREEMENT PROGRAM

Emerging Projects Agreement Program – Purpose

The goal of the Emerging Projects Agreement Program is to provide eligible Project Programs with technical assistance in the development and planning stages of the projects. Under the Emerging Projects Agreement Program, the Department provides heightened technical assistance to Project Programs that will potentially seek credit assistance through one or both Credit Programs in the future.

Emerging Projects Agreement Program – Selection Criteria

Project Programs that meet the criteria listed below will be considered for the Emerging Projects Agreement Program. However, satisfaction of the criteria does not automatically guarantee admission into the Emerging Projects Agreement Program, which is a determination made at the discretion of the Department.⁶

⁶ Note: Lack of acceptance into the Emerging Projects Agreement Program does not disqualify a project from receiving credit assistance through a Credit Program through the traditional application process.

Criteria⁷

- A program comprised of at least two related projects, each of which are usable by the public even if the other projects are not completed;
- Each project must be an eligible project under the statutory requirements of the relevant Credit Program⁸;
- The estimated total cost of the Project Program is no less than \$5 billion (as evidenced by a preliminary budget included with the Letter of Interest/Draft Application);
- The Project Program is located in multiple states or in multiple counties within a metropolitan area;
- The Project Program is critical to the continued mobility and economic health of the region in which it is located and is of national significance;
- Each project is being carried out by, or is receiving material financial support from, multiple state, local, or regional governmental authorities;
- Construction of the first project is expected to begin within 5 years; and
- The sponsors of the Project Program have demonstrated the need for heightened technical assistance from the Department.

Emerging Projects Agreement Program – Application Package Requirements

Project sponsors interested in the Emerging Projects Agreement Program must submit a Letter of Interest/Draft Application to the Bureau indicating their interest in the Emerging Projects Agreement Program. When applying for the Emerging Projects Agreement Program, in addition to following the relevant Credit Program's specific requirements, project sponsors must describe in their Letter of Interest/Draft Application the projects anticipated to be covered by the Emerging Projects Agreement Program, the anticipated construction schedule, the anticipated schedule for application for credit assistance for the projects, and the anticipated total project cost for each project in the Project Program and the aggregate project cost for the Project Program. In the materials, the project sponsor must also demonstrate how the Project Program meets the selection criteria described above. In addition, the project sponsor should submit (to the extent they are available and even if preliminary in nature) project plans and financial plans, including potential revenue sources.

Emerging Projects Agreement Program – Contracting Approach

After the Department's decision to accept a Project Program into the Emerging Projects Agreement Program, the Bureau will sign an emerging projects agreement with the project sponsor, which will describe the technical assistance to be provided by the Department, and set forth any known requirements that must be met in order for the project sponsor to submit a complete Letter of Interest/Draft Application for credit assistance. The execution of an emerging projects agreement is not a commitment of funds and does not obligate the Department to provide credit assistance for the Project Program.

⁷ Applications for the Emerging Projects Agreement Program that were received prior to the publication of this revised guidance will be reviewed using the criteria in the previous version of the guidance published on September 23, 2016.

⁸ Please see 23 U.S.C Section 601 for the TIFIA eligible projects criteria and 45 U.S.C Section 822 for the RRIF eligible projects criteria.